

**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING  
Whether there has been a violation  
of the Securities Act of Washington by:

DAVE H. TRINH,

Respondent.

S-02-235-03-FO01

ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND FINAL  
ORDER TO CEASE AND DESIST

Case No. S-02-235

THE STATE OF WASHINGTON TO: Dave H. Trinh

On February 4, 2003, the Securities Administrator of the State of Washington issued Summary Order to Cease and Desist S-02-235-04-TO01, hereinafter referred to as the "Summary Order", against Respondent Dave H. Trinh. On February 23, 2003, the Summary Order, together with a Notice of Opportunity to Defend and Opportunity for Hearing (hereinafter referred to as "Notice of Opportunity for Hearing") and an Application for Adjudicative Hearing (hereinafter referred to as "Application for Hearing"), were personally served on Dave H. Trinh. The Notice of Opportunity for Hearing advised Dave H. Trinh that he had twenty days from the date he received the notice to file a written application for an adjudicative hearing on the Summary Order.

Dave H. Trinh failed to request an adjudicative hearing within twenty days of his receipt of the Summary Order and Notice of Opportunity for Hearing, either on the Application for Hearing provided or otherwise.

ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF  
LAW AND FINAL ORDER TO CEASE AND DESIST

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**DEPARTMENT OF FINANCIAL INSTITUTIONS**  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760

1 The Securities Administrator therefore adopts as final the findings of fact and conclusions of law  
2 as set forth in the Summary Order.

3 The Securities Administrator finds as follows:

## 4 FINDINGS OF FACT

### 5 I. Respondent

6 1. **DAVE H. TRINH** (“Trinh”) was registered with the state of Washington as a securities  
7 salesperson with MML Investors Services, Inc. (“MML”) from October of 1997 until his termination in  
8 December of 1999. Trinh was also registered with the state of Washington as a securities salesperson for  
9 BMA Financial Services, Inc. from June of 1997 to October of 1997. Trinh is a Washington state  
10 licensed insurance agent. His last known residence was located in Renton, Washington.

### 11 II. Nature of the Conduct

12 2. Mr. G.<sup>1</sup>, a Washington resident, was initially contacted by Trinh in approximately April of  
13 1998. Mr. G. met with Trinh to review his finances. At that meeting, Mr. G. told Trinh that he wanted to  
14 move his pension funds and invest them in stock. Trinh told Mr. G. that he could assist him.

15 3. Trinh recommended that Mr. G. purchase a variable annuity. On or about April 24, 1998  
16 and upon Trinh’s recommendation, Mr. G. applied for and purchased a Single Purchase Payment  
17 Variable Annuity from Massachusetts Mutual Life Insurance Company (“MassMutual”).

18 4. Later in 1998, Trinh recommended that Mr. G. purchase a second variable annuity. On or  
19 about September 22, 1998, upon Trinh’s recommendation, Mr. G. applied for a Flexible Purchase  
20 Payment Variable Annuity (“Flexible Annuity”), and agreed to an initial payment of \$14,000. Trinh also  
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22 <sup>1</sup> The person’s full name is omitted for the purposes of privacy protection.

recommended that Mr. G. purchase 500 shares of Elk City Mining stock for \$1,000. On or about September 22, 1998, Mr. G. gave Trinh a personal check dated September 22, 1998 for \$15,000 payable to "MassMutual". This check was given to Mr. G. for the purpose of investing \$14,000 in the Flexible Annuity, and \$1,000 in the Elk City Mining stock. At that time, Trinh had only passed the Investment Company Products/Variable Contracts Limited Representative examination (Series 6), which limited him to the purchase or sale of investment company securities and variable contracts. Therefore, Trinh was prohibited from executing Mr. G.'s Elk City Mining stock trade. Rather than informing Mr. G. of this fact, Trinh instead opened an account at a broker-dealer he did not work for, Web Street Securities, Inc. ("Web Street"). On or about October 2, 1998, Trinh affixed the signature of Mr. G. to an account application to open a securities account at Web Street in Mr. G.'s name without his knowledge, consent or authorization. Trinh provided his own telephone number and e-mail address in the application, falsely representing that they were Mr. G.'s telephone number and e-mail address. On or about October 9, 1998, an account was opened in Mr. G.'s name at Web Street. Trinh deposited Mr. G.'s check to Trinh's own personal bank account, but later deposited \$1,000 to Mr. G.'s Web Street account. The \$14,000 was used by MassMutual to fund the Flexible Annuity purchased by Mr. G.

5. On or about October 30, 1998, Mr. G. received an account statement from Web Street reflecting the purchase of 500 shares of Elk City Mining stock. Mr. G. was confused as to why he was getting statements from Web Street rather than MassMutual, and questioned Trinh about it. Trinh told Mr. G. that MassMutual was affiliated with Web Street. In reality, MassMutual is not, nor has it ever been affiliated with Web Street.

6. On or about January 19, 1999, Mr. G. gave Trinh a personal check dated January 19, 1999 for \$25,000 payable to Web Street for the purpose of purchasing Immunex stock. On or about February

1 3, 1999, Mr. G. received a confirmation notice from Web Street for the purchase of 166 shares of  
2 Immunex at \$150 per share. Mr. G. contacted Trinh and complained to him about the fact that the  
3 purchase of the Immunex stock occurred nearly three weeks after he had placed the order. Trinh told Mr.  
4 G. that to compensate him for this error, Web Street would purchase six additional shares of Immunex  
5 stock for him at no cost. On or about February 5, 1999, Mr. G. received a confirmation notice from Web  
6 Street for the purchase of six shares of Immunex stock. However, Mr. G.'s funds were used for this  
7 purchase. Web Street did not purchase six additional shares of Immunex stock for Mr. G. at no cost as  
8 Trinh had represented.

9 7. On or about February 10, 1999, Trinh told Mr. G. that MassMutual was "switching"  
10 affiliations from Web Street to MML. At Trinh's request, Mr. G. completed a MML Investor Account  
11 Form that he returned to Trinh. Trinh did nothing with the form and did not open an account at MML for  
12 Mr. G. As a result of Trinh's misrepresentations, Mr. G. believed an account had been opened in his  
13 name at MML and that his securities were going to be held there.

14 8. On or about February 10, 1999, Mr. G. gave Trinh a personal check dated February 10,  
15 1999 for \$24,916.50 payable to "WebStreet/Dave Trinh" for the purpose of purchasing 196 shares of  
16 Immunex stock. Trinh deposited the check to his personal bank account on February 11, 1999. On  
17 February 17, 1999, Trinh authorized a wire transfer of \$24,916.50 from his own bank account to Mr. G.'s  
18 Web Street account. On or about February 25, 1999, Trinh submitted a purchase order for Immunex  
19 shares, but subsequently cancelled the purchase. When Mr. G. received a confirmation notice from Web  
20 Street of the cancellation, Mr. G. questioned Trinh about it. Trinh then misled Mr. G. by telling him that  
21 despite the cancellation notice, the Immunex stock had been purchased and he actually owned the shares.  
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1           9.     On or about February 17, 1999, Trinh affixed the signature of Mr. G. to a margin agreement  
2 for Mr. G.'s Web Street account without Mr. G.'s knowledge, consent or authorization.

3           10.    On or about March 16, 1999, Trinh affixed the signature of Mr. G. to a facsimile transmittal  
4 sheet addressed to Web Street, without Mr. G.'s knowledge, consent or authorization. The facsimile  
5 transmittal sheet requested that the address for Mr. G.'s account of record at Web Street be changed to  
6 Trinh's own home address. Mr. G.'s Web Street account statements were now being sent directly to  
7 Trinh, further shielding Mr. G. from his actual financial position.

8           11.    In March, May, June, July, August and November of 1999, Mr. G. received account  
9 statements via first class mail, purportedly from MML. In fact, Trinh created the account statements in  
10 order to conceal his activities. These fabricated statements matched Trinh's oral misrepresentations and  
11 therefore misrepresented Mr. G.'s account holdings.

12           12.    On or about May 27, 1999, Trinh affixed the signature of Mr. G. on a check dated May 27,  
13 1999 for \$24,000 payable to "Dave Trinh" and drawn on Mr. G.'s Web Street money market funds,  
14 without Mr. G.'s knowledge, consent or authorization. On May 28, 1999, Trinh deposited the check to  
15 his personal bank account.

16           13.    On or about September 14, 1999, Mr. G. contacted Trinh and requested the purchase of  
17 1,000 shares of Watchguard Technologies, Inc. ("Watchguard"). Trinh purchased the stock in Mr. G.'s  
18 Web Street account on margin. Trinh's utilized margin without Mr. G.'s knowledge, consent, or  
19 authorization. The purchase of Watchguard stock on margin created a debit balance in Mr. G.'s Web  
20 Street account of over \$16,000.

21           14.    On or about October 5, 1999, Mr. G. received a form via first class mail, purportedly from  
22 MML, confirming the purchase of 1,000 shares of Watchguard and requesting that Mr. G. mail a check

for \$17,279.95 to pay for the stock. Trinh created this form in furtherance of his attempt to mislead Mr. G. into believing his securities were being held at MML. Mr. G. mailed a personal check to Trinh dated October 5, 1999 for \$17,279.95 payable to "US Clearing". Trinh forwarded the check to Web Street in payment for the stock.

15. MML terminated Trinh in December of 1999. Trinh concealed his termination from Mr. G.

16. In approximately March of 2000, Mr. G. contacted Trinh and requested that he sell 1,000 shares of Watchguard. Trinh failed to follow Mr. G.'s instructions to sell the stock. On or about July 27, 2000, Mr. G. contacted Trinh and requested that he sell 4,416 shares of Immunex. Trinh subsequently sold 2,000 shares of Immunex at \$66 per share, but failed to sell the remaining shares.

17. As a result of Trinh's usage of Mr. G.'s investment funds, Mr. G. lost approximately \$270,000.

Based upon the above Findings of Fact, the following Conclusions of Law are made:

### CONCLUSIONS OF LAW

1. The offer and/or sale of the investments described above constitutes the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12), to wit: stock.

2. The offer and/or sale of said securities was made in violation of RCW 21.20.010 because, as set forth above in paragraphs 4 through 17 of the Tentative Findings of Fact, Respondent made untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

3. Respondent has violated RCW 21.20.040 by offering said securities while not being registered as a broker-dealer or securities salesperson in the state of Washington.

1 **FINAL ORDER**

2 Based upon foregoing, NOW, THEREFORE, IT IS HEREBY ORDERED that Dave H. Trinh  
3 cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities Act.


4 It is further ORDERED that Dave H. Trinh cease and desist from violating RCW 21.20.040 by  
5 acting as a securities broker-dealer or securities salesperson without being so registered.

6 **AUTHORITY AND PROCEDURE**

7 This Order is entered pursuant to the provisions of RCW 21.20.390 and is subject to the  
8 provisions of Chapter 34.05 RCW.


9 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

10 DATED this 3 day of April, 2003.

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14 DEBORAH R. BORTNER  
Securities Administrator

15 Approved by:

Presented by:

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18 Michael E. Stevenson  
Chief of Enforcement

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23 //////C Standifer////////  
Chad Standifer  
Staff Attorney